

Message Text

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E.O. 11652: N/A

TAGS: ECOSOC

SUBJECT: ECOSOC: 55 - ECONOMIC COMMISSION FOR WEST ASIA

REF: GENEVA 3876

1. IN RESPONSE TO YOUR SPECIFIC REQUESTS IN PARAGRAPH 3
OF REFTEL

(A) ECOSOC HAS NEVER BEFORE REQUESTED AN ADVISORY OPINION OF ICJ. WHILE WE ARE UNABLE TO DETERMINE CONCLUSIVELY WHETHER ECOSOC HAS EVER DEBATED OR CONSIDERED MAKING SUCH A REQUEST, WE DO NOT RECALL THAT THIS HAS EVER HAPPENED.

(B) WE ARE OF THE OPINION THAT GA RESOLUTION 89(1) CLEARLY GIVES GENERAL RPT GENERAL AUTHORITY TO ECOSOC TO MAKE DIRECT RPT DIRECT REQUEST FROM ECOSOC TO COURT FOR ICJ ADVISORY OPINION. THIS PROBLEM WAS CONSIDERED IN COURSE OF SIXTH COMMITTEE DEBATE PRECEDING THE ADOPTION OF THAT RESOLUTION (SEE THE REPERTORY OF PRACTICE OF UN ORGANS, VOLUME V, ARTICLES 92-111 OF THE CHARTER (1955), PARAGRAPHS 190-215). ESSENCE OF THE DEBATE WAS WHETHER A GENERAL OR AD HOC AUTHORIZATION SHOULD BE GIVEN TO ECOSOC AND THE SPECIALIZED AGENCIES TO REQUEST ADVISORY OPINIONS

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OF THE ICJ. BY THE AD HOC MECHANISM, WHICH WAS NOT

ADOPTED, THE VARIOUS UN ORGANS OR SPECIALIZED AGENCIES WOULD HAVE TO AWAIT SPECIAL AUTHORIZATION BY THE GA IN EACH CASE. (DEBATE ON THE GENERAL AUTHORIZATION MECHANISM,

WHICH WAS ADOPTED, DOES NOT SPECIFICALLY CONFIRM THAT ECOSOC AND THE SPECIALIZED AGENCIES CAN REQUEST ICJ ADVISORY OPINIONS DIRECTLY RATHER THAN THROUGH UNGA ACTING AS SIMPLE "CONDUIT"; HOWEVER, THE ABOVE REFERENCED PARAGRAPHS OF THE CITED REPERTORY OVERWHELMINGLY SUPPORT THIS INFERENCE.)

(C) AS FURTHER SUPPORT OF THIS VIEW, THE 1971-72 ICJ YEARBOOK (CHAPTER III, PARA II, ADVISORY JURISDICTION, AT PP. 46-47) LISTS THOSE VARIOUS BODIES WHICH ARE AUTHORIZED, IN ACCORDANCE WITH THE UN CHARTER, TO REQUEST ICJ ADVISORY OPINIONS. LISTED SEPARATELY RPT SEPARATELY ARE THOSE VARIOUS ORGANS OF THE UN (INCLUDING THE SC, GA, ECOSOC, TC, ETC.) AND VARIOUS SPECIALIZED AGENCIES (AND IAEA) WHICH HAVE BEEN AUTHORIZED TO REQUEST SUCH OPINIONS. THIS SEPARATE LISTING SERVES TO CONFIRM THAT THE VARIOUS BODIES ENUMERATED MAY APPLY DIRECTLY TO THE ICJ FOR ADVISORY OPINIONS. THE SAME ICJ YEARBOOK (PP. 49-54) LISTS THE VARIOUS TEXTS WHICH GOVERN THE ADVISORY JURISDICTION OF THE ICJ VIS-A-VIS THE VARIOUS UN ORGANS AND SPECIALIZED AGENCIES.

(D) THERE ARE TWO PRECEDENTS WHICH ALSO BEAR OUT THIS VIEW: IN REQUESTING AN ADVISORY OPINION OF THE ICJ, THE SECRETARY-GENERAL OF IMCO (AS INSTRUCTED BY IMCO) COMMUNICATED BY LETTER DIRECTLY WITH THE ICJ (SEE CONSTITUTION OF THE MARITIME SAFETY COMMITTEE OF IMCO, ADVISORY OPINION OF 8 JUNE 1960). A SIMILAR PRACTICE WAS FOLLOWED IN A CASE INVOLVING UNESCO (SEE JUDGMENTS OF THE ADMINISTRATIVE TRIBUNAL OF THE ILO UPON COMPLAINTS MADE AGAINST UNESCO, ADVISORY OPINION OF 23 OCTOBER 1956) WHERE THE DIRECTOR-GENERAL OF UNESCO, PURSUANT TO A RESOLUTION OF THE UNESCO EXECUTIVE BOARD, COMMUNICATED BY LETTER DIRECTLY WITH THE ICJ TO REQUEST AN ADVISORY OPINION. GENERAL AUTHORIZATION FOR REQUESTS FOR ICJ ADVISORY OPINIONS BY IMCO AND UNESCO, IN TERMS ESSENTIALLY IDENTICAL TO THAT FOR ECOSOC, IS FOUND IN THEIR RESPECTIVE AGREEMENTS WITH THE UN TO BECOME SPECIALIZED AGENCIES. IN EACH AGREEMENT, THE GENERAL ASSEMBLY SPECIFICALLY AUTHORIZED THE APPROPRIATE ORGAN OF IMCO OR UNESCO TO ADDRESS THE COURT WITH THE REQUEST. SEE U.N.T.S. II, NO. 11, VOL. 1 (FOR UNESCO AGREEMENT WITH UN); U.N.T.S., II, NO. 533, VOL. 324 (FOR IMCO AGREEMENT WITH UN).

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(E) WHILE THESE PRECEDENTS INVOLVE SPECIALIZED AGENCIES RATHER THAN ECOSOC, IT IS ILLOGICAL TO CONCLUDE THAT GENERAL ASSEMBLY WOULD GIVE A SPECIALIZED AGENCY THE AUTHORITY TO MAKE A DIRECT REQUEST FOR AN ADVISORY OPINION, WHILE NOT GIVING THE SAME AUTHORITY TO ECOSOC, WHICH IS A MAJOR UN ORGAN AS WELL AS THE BODY WHICH HAS MAJOR RESPONSIBILITY FOR BRINGING SPECIALIZED AGENCIES INTO THE UN FAMILY AND SUBSEQUENT COORDINATION OF THEIR ACTIVITIES.

2. RESPONSE TO REQUEST 3(C) OF REFTEL FOLLOWS SEPTEL. ROGERS

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